IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4278 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNAGAR DISTRICT PANCHAYAT & 1 - Petitioner(s)
Versus
JAYABEN B BORICHA - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1 - 2.
MR RD RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/08/2007

ORAL JUDGMENT

1. Heard Mr.H.S.Munshaw, learned counsel for the petitioners and Mr.R.D. Raval, learned counsel for the respondent.

2. The petitioners, being aggrieved by the award dtd.19/8/2000 passed by the Labour Court, Bhavnagar in (LCB) No. 498 of 1998, are before this Court with a submission that the court below was unjustified in answering the reference in favour of the workman with a direction to the present petitioners to reinstatement the workman at her original post.

3. Relying upon a Full Bench judgment in the matter of H.K. Makwana Vs. State, 1994 (2) G.L.R. 1002, Mr.Munshaw, learned counsel for the petitioners submitted that the respondent, who was engaged in scarcity programme, could not be deemed to be a workman, nor the scarcity work could be taken to be an industry and as such the respondent would not have been entitled to any relief. Referring to the Examination-in-chief of the respondent workman, he submitted that she had admitted that she was engaged in scarcity work.

4. Mr.Raval, learned counsel for the respondent workman submitted that in the Examination-in-chief, such a statement was made, but in the Cross-examination, the workman had clearly stated that it was wrong to suggest

that she was engaged in scarcity programme / work.

5. In the matter of H.K. Makwana (supra), the Full Bench of this Court has observed that the employment offered to the persons on the scarcity relief work as undertaken by the State, cannot be said to be employment in 'industry' as defined by sec.2(J) of the Industrial Disputes Act, 1947. The Court has also given reasons as to why such scarcity relief work cannot be termed as scarcity work.

6. The respondent workman in her Examination-in-chief has clearly admitted that she was engaged in scarcity relief work. In the Cross-examination, whatever she has stated, has not been correctly recorded. One one side, Mr.Munshaw, learned counsel for the petitioners wanted to say that the workman had admitted that she was kept in scarcity relief work, but, Mr.Raval, learned counsel for the respondent workman wants to argue that it was wrong to say that she was engaged in scarcity relief work. The statement available for the Court reads as under :-

“Achhat samay daramyam te vat '.....' chhe”

Mr.Raval, learned counsel for the respondent

workman says hat the word in dispute is to be read as 'kho' and the Court should further supply the word “ti” to make the word “khoti” or wrong, while Mr.Munshaw, learned counsel for the petitioners submits that from the structure / design of the word, it would appear to be 'khare', which would mean true.

7. Without entering any further into the said dispute, I must say that in the Examination-in-chief the respondent has clearly admitted that she was engaged in scarcity relief work and if that be so, the Full Bench judgement of this Court, in the matter of H.K. Makwana, would seal the fate of the workman.

8. The petition deserves to and is accordingly allowed. Rule is made absolute. The impugned award made by the Labour court is hereby quashed. No costs.

(R.S. GARG, J.)

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